

1 RONALD J. TENPAS
Assistant Attorney General
2 S. JAY GOVINDAN
Senior Trial Attorney
3 Environment and Natural Resources Division
United States Department of Justice
4 Benjamin Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
5 Telephone: (202) 305-0237
Facsimile: (202) 305-0275
6 Jay.Govindan@usdoj.gov

7 Attorneys for Federal Defendants

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 CITIZENS FOR BIOLOGICAL DIVERSITY,)

12 Plaintiff,)

13 v.)

14 MICHAEL CHERTOFF, in his official capacity as)
15 Secretary of the U.S. Department of Homeland)
Security, REAR ADMIRAL CRAIG E. BONE, in his)
16 official capacity as Commander of U.S. Coast Guard)
District Eleven, and UNITED STATES COAST)
17 GUARD,)

18 Defendants.)
19 _____)
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**ANSWER TO
COMPLAINT
FOR DECLARATORY
JUDGMENT AND
INJUNCTIVE RELIEF**

Case No. 08-2999 MMC

ANSWER OF FEDERAL DEFENDANTS

COME NOW, Defendants, Michael Chertoff, in his official capacity as Secretary of the U.S. Department of Homeland Security, Rear Admiral Craig E. Bone, in his official capacity as Commander of U.S. Coast Guard District Eleven, and the United States Coast Guard, (collectively “Federal Defendants”), and in answer to Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief hereby admit, deny, and aver as follows:

GENERAL DENIAL

Federal Defendants deny any allegations contained in Plaintiff’s Complaint, whether express or implied, that are not specifically admitted, denied or qualified herein. To the extent that any of Plaintiff’s allegations are directed at less than all of the Federal Defendants, the responses below are hereby adopted by all Federal Defendants.

SPECIFIC DENIALS

The numbered paragraphs of this Answer correspond to the numbered paragraphs of Plaintiff’s Complaint.

1. The allegations in Paragraph 1 are too vague and ambiguous to permit a response and on that basis, Federal Defendants deny the same.
2. The allegations in the first sentence of Paragraph 2 consist of conclusions of law which require no response. Federal Defendants deny the allegations in the second sentence of Paragraph 2.
3. The allegations in Paragraph 3 are too vague and ambiguous to permit a response and on that basis, Federal Defendants deny the same.
4. The allegations in Paragraph 4 consist of conclusions of law which require no response. To the extent that a response is required, the allegations are denied.
5. The allegations in Paragraph 5 purport to characterize Plaintiff’s case and require no response.

JURISDICTION AND VENUE

6. The allegations in Paragraph 6 consist of conclusions of law and require no response.

- 1 7. The allegations in the first sentence of Paragraph 7 purport to characterize Plaintiff's case
2 and require no response. In response to the allegations in the second sentence of
3 Paragraph 7, Federal Defendants admit that Plaintiffs sent a letter to Federal Defendants
4 dated November 8, 2007, which speaks for itself and is the best evidence of its contents.
5 Any allegations contrary to that letter's plain language, meaning and context are denied.
6 The allegations in the third sentence of Paragraph 7 consist of legal conclusions which
7 require no response. To the extent that a response is required, the allegations are denied.
- 8 8. In response to the allegations in the first sentence of Paragraph 8, Federal Defendants
9 admit that the office of Rear Admiral Craig E. Bone is located at the Coast Guard
10 Eleventh District headquarters on Coast Guard Island, and the remaining allegations in
11 the first sentence of Paragraph 8 consist of legal conclusions which require no response.
12 The allegations in the second sentence of Paragraph 8 purport to characterize Plaintiff's
13 case and require no response.
- 14 9. The allegations in Paragraph 9 consist of legal conclusions which require no response.

15 **PARTIES**

- 16 10. Federal Defendants lack sufficient information to form a belief regarding the allegations
17 in Paragraph 10, and on that basis deny the same.
- 18 11. Federal Defendants lack sufficient information to form a belief regarding the allegations
19 in Paragraph 11, and on that basis deny the same.
- 20 12. Federal Defendants lack sufficient information to form a belief regarding the allegations
21 in Paragraph 12, and on that basis deny the same.
- 22 13. In response to the allegations in Paragraph 13, Federal Defendants admit that Michael
23 Chertoff is the Secretary of the United States Department of Homeland Security, and the
24 remainder of the allegations in Paragraph 13 consist of conclusions of law which require
25 no response.
- 26 14. Federal Defendants admit the allegations in the first sentence of Paragraph 14. In
27 response to the allegations in the second sentence of Paragraph 14, Federal Defendants
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1 admit that Rear Admiral Bone maintains an office in U.S. Coast Guard District Eleven,
2 and state that the remaining allegations in this sentence consist of conclusions of law
3 which require no response.

- 4 15. Federal Defendants admit the allegations in the first and third sentences of Paragraph 15.
5 The allegations in the second sentence of Paragraph 15 consist of conclusions of law
6 which require no response.

7 **LEGAL BACKGROUND**

- 8 16. The allegations in Paragraph 16 purport to characterize provisions of the Endangered
9 Species Act, a statute which speaks for itself and is the best evidence of its contents. Any
10 allegations contrary to the statute's plain language, meaning and context are denied.

- 11 17. The allegations in Paragraph 17 consist of conclusions of law which require no response,
12 and further consist of Plaintiff's characterization of the requirements of the Endangered
13 Species Act, a statute which speaks for itself and is the best evidence of its contents. Any
14 allegations contrary to the statute's plain language, meaning and context are denied.

- 15 18. The allegations in Paragraph 18 purport to characterize provisions of the Ports and
16 Waterways Safety Act, a statute which speaks for itself and is the best evidence of its
17 contents. Any allegations contrary to the statute's plain language, meaning and context
18 are denied.

- 19 19. The allegations in Paragraph 19 consist of conclusions of law which require no response,
20 and further consist of Plaintiff's characterization of the requirements of the Ports and
21 Waterways Safety Act, a statute which speaks for itself and is the best evidence of its
22 contents. Any allegations contrary to the statute's plain language, meaning and context
23 are denied.

- 24 20. The allegations in Paragraph 20 purport to characterize provisions of the Ports and
25 Waterways Safety Act, a statute which speaks for itself and is the best evidence of its
26 contents. Any allegations contrary to the statute's plain language, meaning and context
27 are denied.

1 21. The allegations in Paragraph 21 purport to characterize provisions of the Ports and
2 Waterways Safety Act, a statute which speaks for itself and is the best evidence of its
3 contents. Any allegations contrary to the statute's plain language, meaning and context
4 are denied.

5 22. The allegations in Paragraph 22 consist of conclusions of law which require no response,
6 and further consist of Plaintiff's characterization of the requirements of the Ports and
7 Waterways Safety Act, a statute which speaks for itself and is the best evidence of its
8 contents. Any allegations contrary to the statute's plain language, meaning and context
9 are denied.

10 **FACTUAL BACKGROUND**

11 23. Federal Defendants admit the allegations in the first two sentences of Paragraph 23. The
12 allegations in the third sentence of Paragraph 23 are too vague and ambiguous to permit a
13 response, and on that basis, the allegations are denied.

14 24. Federal Defendants admit the allegations in Paragraph 24.

15 25. The allegations in Paragraph 25 are too vague and ambiguous to permit a response and on
16 that basis Federal Defendants deny the allegations.

17 26. In response to the allegations in Paragraph 26, Federal Defendants admit that the blue
18 whale is listed as an endangered species. The remaining allegations characterize the
19 listing decision for the blue whale and estimates from the National Marine Fisheries
20 Service, which speak for themselves and are the best evidence of their contents. Any
21 allegations contrary to the plain language, meaning, and context of those decisions and
22 estimates are denied.

23 27. The allegations in Paragraph 27 purport to characterize the contents of the recovery plan
24 for the blue whale, which speaks for itself and is the best evidence of its contents. Any
25 allegations contrary to the plain language, meaning, and context of the recovery plan are
26 denied.

27 28. The allegations in the first sentence of Paragraph 28 purport to characterize a
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1 determination by the National Marine Fisheries Service, which speaks for itself and is the
2 best evidence of its contents. Any allegations contrary to that determination's plain
3 language, meaning and context are denied. Federal Defendants lack sufficient
4 information to form a belief regarding the remaining allegations in Paragraph 28, and on
5 that basis, deny the same.

6 29. Federal Defendants lack sufficient information to form a belief regarding the allegations
7 in Paragraph 29, and on that basis, deny the same.

8 30. Federal Defendants admit the allegations in the first sentence of Paragraph 30. The
9 remaining allegations in Paragraph 30 purport to characterize population estimates and
10 the contents of a stock assessment report, which speaks for themselves and are the best
11 evidence of their contents. Any allegations contrary to those materials' plain language,
12 meaning and context are denied.

13 31. Federal Defendants lack sufficient information to form a belief regarding the allegations
14 in Paragraph 31, and on that basis, deny the same. Federal Defendants further state that
15 the allegations in Paragraph 31 are too vague and ambiguous to permit a response, and on
16 that basis, the allegations are denied.

17 32. Federal Defendants admit the allegations in the first sentence of Paragraph 32. In
18 response to the allegations in the second sentence of Paragraph 32, Federal Defendants
19 admit that the range of the sei whale includes the waters off the coast of California which
20 may include shipping lanes, and deny the remaining allegations in this sentence. The
21 allegations in the third sentence of Paragraph 32 purport to characterize a determination
22 from the National Marine Fisheries Service, which speaks for itself and is the best
23 evidence of its contents. Any allegations contrary to the plain language, meaning and
24 context of this determination are denied.

25 33. Federal Defendants admit the allegations in the first sentence of Paragraph 33. Federal
26 Defendants lack sufficient information to form a belief regarding the allegations in the
27 second and third sentences of Paragraph 33, and on that basis, deny the same.
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1 34. Federal Defendants admit the allegations in the first sentence of Paragraph 34. Federal
2 Defendants lack sufficient information to form a belief regarding the allegations in the
3 second sentence of Paragraph 34, and on that basis, deny the same. In response to the
4 allegations in the third sentence of Paragraph 34, Federal Defendants admit that North
5 Pacific right whales are found in waters along the coast of California and deny the
6 remaining allegations in this sentence.

7 35. The allegations in Paragraph 35 are too vague and ambiguous to permit a response and on
8 that basis, Federal Defendants deny the same.

9 36. Federal Defendants admit that other listed species are found in the waters off the
10 California coast, and lack sufficient information to form a belief regarding the remaining
11 allegations in Paragraph 36, and on that basis, deny the same.

12 37. Federal Defendants deny the allegations in Paragraph 37.

13 38. Federal Defendants admit the allegations in the first three sentences of Paragraph 38. The
14 remaining allegations in Paragraph 38 consist of conclusions of law which require no
15 response.

16 39. Federal Defendants admit the allegations in the first sentence of Paragraph 39. The
17 allegations in the second sentence of Paragraph 39 consist of legal conclusions which
18 require no response. To the extent that a response is required, the allegations are denied.

19 40. Federal Defendants admit the allegations in the first sentence of Paragraph 40. The
20 allegations in the second sentence of Paragraph 40 consist of legal conclusions which
21 require no response. To the extent that a response is required, the allegations are denied.

22 41. Federal Defendants deny the allegations in Paragraph 41.

23 **CAUSE OF ACTION**

24 42. Each and every allegation set forth in this Answer is incorporated herein by reference.

25 43. Federal Defendants deny the allegations in Paragraph 43.

26 **PRAYER FOR RELIEF**

27 Federal Defendants deny that Plaintiffs are entitled to the relief sought in their Complaint
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1 or to any relief whatsoever. Wherefore, Federal Defendants respectfully request that this Court
2 enter judgment for Federal Defendants, order each party to bear its own attorneys' fees and
3 costs, and order such other relief as the Court deems just and proper.

4 **AFFIRMATIVE DEFENSES**

5 **First Affirmative Defense**

6 Some or all of the claims in Plaintiff's Complaint fail to state a claim upon which relief
7 can be granted.

8 **Second Affirmative Defense**

9 This court lacks subject matter jurisdiction over some or all of Plaintiffs' claims.

10 **Third Affirmative Defense**

11 Plaintiff lacks standing to bring this action.

12 Federal Defendants reserve the right to modify, revise or supplement this Answer, to
13 plead such further defenses as become necessary as this case develops, and reserve the right to
14 adopt any defenses raised by other parties to this litigation.

15 RONALD J. TENPAS
16 Assistant Attorney General
Environment & Natural Resources Division

17 s/ S. Jay Govindan
18 S. JAY GOVINDAN, Senior Trial Attorney
Environment & Natural Resources Division
Wildlife & Marine Resources Section
19 Ben Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
20 Tel: (202) 305-0237
Fax: (202) 305-0275
21 Email: Jay.Govindan@usdoj.gov

22 **OF COUNSEL**
23 Lt. Jeffrey R. Bray
United States Coast Guard